



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**Christine Jennings**

**Chris Jennings for Congress and Susan K. Flynn, Treasurer**

**Christine Jennings for Congress and Susan K. Flynn, Treasurer**

**Jennings 2008 and Ed Chiles, Treasurer**

**P.O. Box 49136**

**Sarasota, FL 34230**

**NOV 12 2008**

**RE: MUR 5982**

**Dear Ms. Jennings:**

On March 21, 2008, the Federal Election Commission notified you and your principal campaign committees, Chris Jennings for Congress and Susan K. Flynn, in her official capacity as Treasurer, Christine Jennings for Congress and Susan K. Flynn, in her official capacity as Treasurer, and Jennings 2008 and Ed Chiles, in his official capacity as Treasurer, of a Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 7, 2008, the Federal Election Commission reviewed the allegations and on the basis of the information in the Complaint, information provided by you, and information available to the public, dismissed the Complaint. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Shonkwiler", with a long horizontal line extending to the right.

**Mark D. Shonkwiler**  
**Assistant General Counsel**

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**MUR 5982**  
**Letter to Brian G. Svoboda**

**cc: Brian G. Svoboda, Esq.**  
**Perkins Coie**  
**607 Fourteenth Street, N.W.**  
**Washington, DC 20005-2011**

**Enclosure**  
**Factual and Legal Analysis**

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 5982**

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8 **RESPONDENTS:** Christine Jennings

9 Chris Jennings for Congress and Susan K. Flynn,  
10 in her official capacity as Treasurer

11 Christine Jennings for Congress and Susan K. Flynn,  
12 in her official capacity as Treasurer

13 Jennings 2008 and Ed Chiles,  
14 in his official capacity as Treasurer

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17 **I. INTRODUCTION**

18 The Complaint alleges that during Christine Jennings' successive campaigns for the  
19 Florida 13th Congressional District seat, Chris Jennings for Congress and Susan K. Flynn, in her  
20 official capacity as Treasurer ("2004 Committee"), Christine Jennings for Congress and Susan K.  
21 Flynn, in her official capacity as Treasurer ("2006 Committee"), and Jennings 2008 and Ed  
22 Chiles, in his official capacity as Treasurer ("2008 Committee"), (collectively the  
23 "Committees"), violated the Federal Election Campaign Act of 1971, as amended ("the Act" and  
24 "FECA") by failing to make timely submissions of taxes withheld from campaign employees to  
25 federal and state taxing authorities, and using these monies to pay for campaign expenses.  
26 Complaint at 1-2.

27 The 2004 Committee reported a debts of \$23,835 to the Internal Revenue Service and  
28 Florida Revenue Department in its 2006 Year End Report, and reported full payment of the debt  
29 in 2007. The 2006 Committee did not disclose any debt relating to overdue tax payments, and  
30 while not reporting any disbursements to tax authorities in 2006, reported disbursements of  
31 approximately \$30,213 in payroll taxes in early 2007. The 2008 Committee did not disclose any

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1 debt relating to overdue tax payments, and reported disbursements of approximately \$22,239 in  
2 payroll taxes in its 2007 Quarterly reports.

3 The Complaint suggests that the Committees' alleged failure to make timely submissions  
4 of tax withholdings amounted to "taking the money from [campaign] employees" and "illegally"  
5 using these funds for campaign purposes. *Id.* at 2. The Complaint claims that these  
6 "misappropriated" funds should be deemed "contributions" for purposes of the Act, *see* 2 U.S.C.  
7 § 431(8), and should be subject to the contribution limits set forth in 2 U.S.C. § 441a(a)(1).  
8 Complaint at 2.

9 Without addressing the factual circumstances surrounding the payment of payroll taxes,  
10 Respondents argue that the Complaint is without merit and should be dismissed.<sup>1</sup> Respondents  
11 contend that the question of whether the Committees properly filed and paid payroll taxes due to  
12 the Internal Revenue Service and state tax authorities in a timely manner is a matter for the  
13 Internal Revenue Service and state authorities to consider. They contend that the issue is beyond  
14 the Commission's jurisdiction and should be dismissed.

15 Although not directly addressed by either the Complaint or the Response, the facts of the  
16 matter also raise questions as to whether some of the Committees failed to report debt to federal  
17 and state taxing authorities.

18 Based on the Complaint, the Response and publicly available information, the  
19 Commission exercised its prosecutorial discretion and dismissed the matter as to Christine  
20 Jennings, Chris Jennings for Congress and Susan K. Flynn, in her official capacity as Treasurer,  
21 Christine Jennings for Congress and Susan K. Flynn, in her official capacity as Treasurer, and  
22 Jennings 2008 and Ed Chiles, in his official capacity as treasurer.

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<sup>1</sup> Jennings 2008 and Ed Chiles, in his official capacity as Treasurer, were named as respondents and notified by the Commission, but have filed no Response to the Complaint.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. The Committees' Non-Payment of Payroll Taxes**

The issue of whether the Committees' payroll taxes were paid in a timely manner, or whether those funds should be considered to have been misappropriated, if used for other purposes, is beyond the scope of the FECA and the jurisdiction of the Commission. The FECA provides that the Commission shall administer and seek to obtain compliance with the Act, and shall have exclusive jurisdiction with respect to the civil enforcement of its provisions. See 2 U.S.C. § 437c(b)(1). The Commission may only issue "reason to believe" findings if a complaint sets forth sufficient specific facts that, if proven to be true, would constitute a violation of the FECA. 11 C.F.R. § 111.4(d).

The Complaint argues that the payroll taxes withheld by the Committees should be deemed "contributions" by the employee because they were owed to the state and federal governments, but not paid to the proper authorities in a timely manner. Thus, it is suggested that the withheld monies were essentially the property of the employees until the time the Committees paid them to the tax authorities, and during the period the Committees held the employees' property, a contribution resulted. The Complaint further contends that these "contributions" by individual employees exceeded the permissible contribution amount and that the Committees knowingly accepted these excessive contributions from paid campaign employees, in violation of 2 U.S.C. § 441a(a) and (f).<sup>2</sup>

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<sup>2</sup> It is worth noting that we have no information from the Complaint or public record concerning how much in payroll taxes was allegedly withheld by the Committees for each specific pay period, as the Internal Revenue Service keeps confidential information concerning the amounts and nature of unpaid taxes and penalties. We only have information about the total amounts paid to the Internal Revenue Service for taxes, including overdue and current payroll taxes and possible late fees or penalties, based on what the Committee disclosed it paid to the state and federal revenue services directly or to the vendor it hired to process its payroll after it discovered it was in violation of the Internal Revenue Code.

1           The Act provides that no person shall make contributions to a candidate for federal office  
2 or his authorized political committee, which exceeds contribution limits set forth in 2 U.S.C.  
3 § 441a(a)(1). Additionally, the Act provides that no political committee shall knowingly accept  
4 a contribution made for the benefit or use of a candidate, in violation of the contribution  
5 limitations imposed in Section 441a(a). *See* 2 U.S.C. § 441a(f). Finally, the FECA requires  
6 authorized candidate committees to file timely and accurate disclosures, detailing all  
7 contributions, expenditures and debts to the committees. 2 U.S.C. § 434(b).

8           As an initial matter, it certainly is not clear that the withheld payroll taxes, which the  
9 employer Committees was required to withhold and submit to the taxing authorities, remain the  
10 property of the employees. To the degree the taxes are owed to tax authorities, neither the  
11 employees nor the Committees have unfettered rights as to use of these funds. Thus it may be  
12 impossible to ascribe the alleged contributions to particular individuals.<sup>3</sup> As discussed below, it  
13 would be more appropriate to regard the funds as a debt due to the taxing authorities.

14           The issue of what amount of payroll taxes were due for each paid staff member, at what  
15 point did the unpaid payroll taxes become legally overdue and subject to penalty, and when and  
16 how an employer might remedy the default, are matters under the jurisdiction of federal and state  
17 tax authorities, and are outside the Commission's jurisdiction to adjudicate. Yet, these issues  
18 have a direct bearing on what the Complaint is asking the Commission to do: declare the overdue  
19 payroll taxes, which were paid with interest and penalties after the Committees' realization as to

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<sup>3</sup> There is a clear distinction between simply declaring the funds to be contributions because they were not paid out in a timely manner, as suggested here, and a circumstance where the employee took money from his paycheck and made a contribution to the Committee. In that instance, the funds would have been disbursed from the Committee's accounts to the employee and the employee would have established ownership and control over the funds before opting to donate the money back to the Committee. The funds would clearly be in the possession of the employee, and the evidence of his intent to "influenc[e] [the] election" would be manifest. *See* 2 U.S.C. § 431(8).

1 the prior nonpayment, to have been sufficiently overdue to constitute contributions to the  
2 Committees.

3 **B. Potential Reporting Violations**

4 It is within the Commission's jurisdiction to examine whether the Committees reported  
5 receipts, disbursements and debts in accordance with applicable disclosure requirements. See 2  
6 U.S.C. § 434(b). Notwithstanding the issue of payroll taxes, the Committees appear to have  
7 properly reported their receipts and disbursements and there are no allegations or indications to  
8 the contrary. 2 U.S.C. § 434(b).

9 What remains to be resolved is the issue of whether the unpaid payroll taxes were  
10 properly reported as debts pursuant to 2 U.S.C. § 434(b). It should be noted that the Complaint  
11 does not explicitly allege reporting failures regarding the tax issue, and consequently, the  
12 Committees' Response does not discuss the issue either. In addition, the Response does not  
13 address the factual circumstances that led to the failure to pay payroll taxes. However, media  
14 reports cited by the Complaint indicate that although the payroll taxes were properly withheld  
15 from employees, the payroll taxes were not timely remitted to state and federal authorities during  
16 some period of time. *Id.* According to media reports, upon discovery of the omission, Jennings  
17 removed the 2004 Committee's Treasurer and contacted the authorities to ascertain the amount  
18 of the debt owed and begin making restitution, including the payment of overdue taxes and  
19 penalties. This raises the issue of whether the Committees properly reported their debts of  
20 overdue taxes and payments to state and federal authorities.

21 A review of the disclosures indicates that the 2004 Committee first disclosed the overdue  
22 payroll tax debt to the Internal Revenue Service in its 2006 Year End report, filed March 17,  
23 2007, and subsequently reported the debt and payments to retire the debts owed to the state and

1 federal revenue agencies in its disclosure reports during the first half of 2007. Both the 2006  
2 Committee and the 2008 Committee disclosed various payments to the state and federal  
3 authorities for payroll taxes, but did not disclose any tax related debt.

4 The Act requires candidate committee to report the amount and nature of all outstanding  
5 debts and obligations owed by the committee. *See* 2 U.S.C. § 434(b)(8). Here, the issue of when  
6 the debt should have been reported is complicated by the fact that the determination of when the  
7 payroll taxes became a "debt" owed to the revenue authorities is unclear. In any event, the debt  
8 reporting issue was not explicitly alleged by the complainant, and we have no response from the  
9 respondent addressing it.

10 The record reflects that the 2004 Committee disclosed a \$23,835 "debt" in their Year-End  
11 Report for 2006 and Quarterly Reports for the first half of 2007 disclosed payments made to  
12 state and federal authorities for the payroll taxes, including fines and penalties. Although the  
13 2006 Committee and the 2008 Committee reported disbursements to the taxing authorities in  
14 their 2007 Quarterly Reports, it is unclear what portion of such payments may have been  
15 delinquent. Indeed, whether the Committees were obligated to report these debts differently  
16 would require factual and legal determinations of, among other things, when the state and federal  
17 revenue collecting agencies considered the debts "overdue" subject to penalty, as well as a  
18 factual investigation of when taxes were withheld for each employee, and the legal "status" of  
19 monies withheld but not yet paid to state and local authorities, some of which are issues beyond  
20 the Commission's jurisdiction. Given the fact that the Complaint makes no allegations regarding  
21 reporting violations, as well as the fact that the 2004 Committee disclosed its debts, and that it is  
22 unclear if the 2006 Committee and 2008 Committee were in fact delinquent, we recommend the  
23 Commission dismiss this matter.



**C. Conclusion**

In sum, the Internal Revenue Service and state authorities maintain jurisdiction over the appropriate filing and payment of payroll taxes. The Commission maintains authority over enforcing the contribution limits and disclosure requirements of the FECA. There is no support for findings that the Committees' violated the FECA by knowingly accepting excessive contributions, as defined by the Act, from paid employees. *See* 2 U.S.C. §§ 441a(a) and (f). Additionally, though there might be grounds for pursuing potential reporting violations, pursuant to 2 U.S.C. § 434(b)(8), given the totality of the circumstances, including the remedial actions taken by the Committees, and the Commission's limited resources, the Commission exercised its prosecutorial discretion to dismiss this matter.